

#1512

Our Ref. No.: 4456P001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application for:)

Richard A. Halavais, et al.)

Application No.: 09/295,577)

Filed: April 22, 1999)

For: INDIVIDUAL SEAT SELECTION)
TICKETING AND RESERVATION)
SYSTEM)

Examiner: C. L. Gilligan

Art Unit: 3626

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APPEAL BRIEF (Corrected)

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Applicants submit, in triplicate, the following Appeal Brief pursuant to 37 C.F.R. § 1.192 for consideration by the Board of Patent Appeals and Interferences (hereinafter referred to as "Board"). Applicants (hereinafter referred to as "Appellants") also submit herewith a check in the amount of \$160.00 to cover the cost of filing this Brief. Please charge any additional amount due or credit any overpayment to deposit Account No. 02-2666.

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I. REAL PARTY IN INTEREST

The real party in interest is MS Integrate, Inc.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences which will affect or be affected by the outcome of this appeal.

III. STATUS OF THE CLAIMS

Claims 7-10, 12-15, and 18-23 have been canceled. Claims 1-6, 11, 16, 17, and 24-34 are pending. The Examiner has rejected the pending Claims under 35 U.S.C. § 103.

IV. STATUS OF THE AMENDMENTS

Subsequent to the final Office Action dated October 22, 2001, Appellants did not file any amendment.

V. SUMMARY OF INVENTION

Information denoting venue availability contained in a database is made available over a wide-area network (WAN), such as the Internet, via a server. (See Figure 1 and the accompanying detailed description.) A prospective customer seeking to purchase tickets to an event connects to the server over the WAN by using a remote computer system (or similar device). For example, the customer may connect to the server by using a web browser on the customer's personal computer. The server provides information pertaining to the availability of seating for a specific performance at a given venue as chosen by the customer. This

information may be provided in a graphical representation, such as a floor plan for the venue showing available and unavailable seats. From this representation, the customer may interactively select the specific seat(s) of interest and submit payment information. The customer's payment information is then verified and, if satisfactory, the customer receives confirmation of such and the selected seats are marked as unavailable for the next prospective customer. The convenience of ordering tickets over a WAN eliminates the need for a customer to purchase tickets in person at a dedicated location.

VI. ISSUES

Are claims 1-6, 11, 16, 17, 24, 26, 27, 29-31, and 34 of the Application rendered obvious by Huegel, U.S. Patent No. 5,239,480?

Is claim 25 of the Application rendered obvious by Huegel in view of Merrill, et al., U.S. Patent No. 5,333,257?

Are claims 28, 32, and 33 rendered obvious by Huegel and Merrill in view of Bricklin, U.S. Patent No. 5,621,430?

VII. GROUPING OF THE CLAIMS

Appellants submit that the claims do not stand or fall together.

Appellants group the claims on appeal as follows:

Group I: Claims 1-6, 11, 16, and 17

Group V: Claim 27

Group II: Claim 24

Group VI: Claim 29

Group III: Claim 25

Group VII: Claim 30, 34

Group IV: Claims 26 and 28

Group VIII: Claims 31-33

Appellants will argue why each of these groups of claims should be allowed below.

VIII. ARGUMENT

The Examiner has rejected claims 1-6, 11, 16, 17, 24, 26, 27, 29-31, and 34 under 35 U.S.C. §103(a) as being unpatentable over Huegel, U.S. Patent No. 5,239,480 ("Huegel"). The Examiner has further rejected claim 25 under 35 U.S.C. §103(a) as being unpatentable over Huegel in view of Merrill, et al., U.S. Patent No. 5,333,257 ("Merrill"). Finally, the Examiner has rejected claims 28, 32, and 33 under 35 U.S.C. §103(a) as being unpatentable over Huegel and Merrill in view of Bricklin, U.S. Patent No. 5,621,430.

A. Overview of the Invention and References

1) Distinctive features of the invention

The distinctive features of the invention include: (1) communicating on demand from an information server through a wide-area network (WAN) to a client node unaffiliated with the server information pertaining to available seating at a particular venue for a particular event; (2) displaying this information in a way such that an end user connected to the WAN can readily view it from a client node unaffiliated with the server; (3) displaying the available seating graphically as in a floor plan of the venue, such that available seats are distinguished from those that are unavailable; (4) providing a representative view from a selected seat ; (5) providing over the WAN to the end user the capability of interactively selecting one of a time, a space, and a seat of choice; and (6) accepting payment from the end user

over the WAN and returning verification thereof to the end user over the WAN. These features are shown in Figures 1 - 4 and described in the detailed description.

2) Overview of the Cited Art

Huegel, as can be seen in Figures 1 – 2b, teaches a system that allows users to purchase tickets for events from a self-service terminal and be presented with the best seats available at the time of purchase. The self-service terminal has within it a database of all events and corresponding locations and times. The user selects a particular event and the self-service terminal contacts a location processor at the corresponding venue through an intermediate network server. The location processor provides the self-service terminal with information concerning the best seats available in each seating area. The user can then select a preferred seating *area* and purchase the tickets through the self-service terminal with a credit card. Ticket purchases are handled by the self-service terminal – not the location processor -- in communication with a payment authority computer. Nowhere in Huegel does the user have the ability to select a *seat of choice*. Rather, the user must accept or reject available seats as selected by the location processor based on the user's preferred seating area.

Merrill teaches a system for displaying selected views of a venue from a given seating area in the context of point-of-sale ticket purchasing. A display program shows a user a list of upcoming events. The user indicates an event of interest via an input device. Local to the system are data files containing information on seating availability and views of the venue from different seats. The user then indicates a seat selection which causes the system to display a view of the venue from the

selected seat. Merrill does not teach transmitting a view to another computer, since views are generated using data local to the system. Furthermore, Merrill does not disclose requesting information about a venue across a WAN since venue information is store locally on the system.

Bricklin teaches a method and apparatus for navigating multiple independent windowed images on a computer display. Data associated with an item may be displayed by selecting an icon representing the item.

B. Errors of Law and Fact

The Examiner failed to establish a *prima facie* case of obviousness in view of the references of record. The Federal Circuit Court of Appeals in In re Rijckaert, 9 F.3d 1531, 28 U.S.P.Q. 2d 1955 (Fed. Cir. 1993) held that:

In rejecting claims under 35 U.S.C. §103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. . . . "A *prima facie* case of obviousness is established when the teaching from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." . . . If the examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned. 9 F.3d at 1532, 28 U.S.P.Q. 2d at 1956 (emphasis added).

Huegel does not teach or suggest at least two features of Appellants' invention as claimed. Firstly, Huegel does not teach or suggest a client node unaffiliated with a server. In the Office Action dated January 12, 2001, the Examiner admitted that the self-service terminal of Huegel was not a client node unaffiliated with a server but then alleged that such would have been obvious to one of ordinary skill in the art since providing the services of an unaffiliated self-service

terminal was well known at the time of the invention (i.e., an on-line banking web site versus an automated teller machine). Appellants challenged this assertion by pointing out to the Examiner that the problems and requirements where no dedicated hardware or software exist on a client are very different from the environment of Huegel in which the entire client is dedicated. See Appellants response of April 11, 2001. In addition, Appellants then requested that the Examiner provided specific references regarding her assertion, the applicability and veracity of which could then be addressed by Appellants. See id. Rather than complying with this request, the Examiner merely reiterated her prior assertion.

"Whether the Board relies on an express or an implicit showing, it must provide particular findings related thereto." In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999)(emphasis added). "Broad conclusory statements... standing alone, are not 'evidence.'" Id. The Examiner's vague assertions regarding what was well known in the art and what would have been obvious at the time are not supported by any particular findings of fact and are, therefor, not evidence.

Furthermore, Appellants' challenge and request for evidence were seasonably expressed:

"If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution." MPEP §2144.03 (emphasis added); In re Chevenard, 139 F.2d 711, 60 USPQ 239 (CCPA 1943).

Thus, the Examiner's position that further discussion of a client node unaffiliated with a server is "moot" since the Examiner's "teaching" was not challenged by Appellants is completely erroneous both in view of the MPEP and cited case law. The Examiner's agreement with the truth of Appellant's statement that "problems and requirements where no dedicated hardware or software exist on the client end are very different from the environment of Huegel in which the entire client is dedicated" demonstrates that discussion on this point is most certainly not "moot" and, furthermore, underscores the fact that the Examiner's assertion cannot stand on its own without additional evidence. See Office Action dated October 22, 2001, p. 4, numbered paragraph 7.

Even assuming the examiner's assertion was true, it is little more than a determination that it would be obvious to try to provide that which Appellants disclose and claim. However, both the Federal Circuit Court of Appeals and its predecessor Court have explicitly excluded this as a standard on which a rejection under 35 U.S.C. §103 may be based. Moreover, the Board of Patent Appeals and Interferences has held that:

"... that which is within the capabilities of one skilled in the art is not synonymous with obviousness ..." Ex Parte Levengood, 28 USPQ 2d 1300, 1302 (Bd. Pat. App. & Inter. 1993).

Thus, in light of the above arguments, cited case law, and the Examiner's own admission, Huegel does not teach or suggest a client node unaffiliated with a server.

Secondly, Huegel does not teach or suggest providing over the WAN to the end user the capability of interactively selecting one of a time, a space, and a seat of

choice. Huegel teaches that a user is constrained to select a general area in which he or she desires to sit. The location processor uses a selection algorithm to select the individual seat on the user's behalf. The Examiner's assertion that it is known to select between an aisle seat in first class and an aisle seat in coach on a commercial airline does not change this fact. Particularly, this is merely the notion of two "sections." Nevertheless, following this logic, the Examiner does not even assert that one is able to choose between seats, e.g., 10C and 10D on a 737 commercial airliner (both are aisle seats). However, 10C may be more desirable for, e.g., a right-handed customer. Thus, the Examiner's argument fails and merely amounts to an unsupported assertion that it is obvious to try which even if true is not dispositive.

The Examiner further argues in the Advisory Action dated January 17, 2002 that unique seat selection can be accomplished in Huegel by first selecting an area of seats that a user wishes to purchase, followed by confirming the selection of the preferred individual seats. This argument also fails for several reasons. To begin with, there is no guarantee that the seat selection algorithm employed by the location processor will ever return a preferred individual seat. Additionally, assuming the location processor did return a preferred individual seat, it would do so by random coincidence as the user has no control over the operation of the seat selection algorithm. Thus, it cannot be said that a user may select a seat of choice using the system of Huegel.

Therefore, no reference cited by the Examiner nor any official notice can validly be taken and combined with Huegel that either teaches or suggests a client

node unaffiliated with a server and providing over the WAN to the end user the capability of interactively selecting one of a time, a space, and a seat of choice.

The Examiner has inappropriately combined Huegel and Merrill as there is no suggestion of the desirability of the combination of those references even when their disclosures are viewed in their entirety. Specifically, there is no teaching or suggestion in Merrill of transmitting an image to a client since images are generated locally on the client. Nor does Merrill disclose obtaining information about a venue across a WAN from a client node to be supplied by an unaffiliated server node since, again, this information is stored locally. Thus, there is no meaningful way in which these references can be combined. Accordingly, the combination fails to teach or suggest more than either reference teaches individually.

Examiner has inappropriately combined Huegel, Merrill, and Bricklin as there is no suggestion of the desirability of the combination of those references even when their disclosures are viewed in their entirety. Specifically, Bricklin does not cure the deficiencies in Huegel and Merrill. Accordingly, the combination fails to teach or suggest more than either reference teaches individually.

C. Rejection of Group I as rendered obvious by Huegel

1) Specific limitations of Group I not described in the cited art

Throughout the following argument, it is assumed that dependent claims carry with them the arguments made in favor of base claims and any intervening claim. Group I requires: (a) a client node unaffiliated with a server, and (b) accepting over the wide area network from an end user a payment for one of the time, the space, and the seat selection of choice.

2) **Explanation why such limitations render Group I unobvious over the cited art**

As discussed previously, Huegel neither teaches nor suggests a client node unaffiliated with a server. Furthermore, and as discussed previously, Huegel neither teaches nor suggests accepting over the wide area network from the end user a payment for a seat selection of choice. Rather, Huegel discloses that an end user may select a general area of interest while an independent algorithm running on a location processor actually selects individual seats on behalf of the end user. Thus, a *prima facie* case of obviousness cannot be established, and the rejection must be overturned.

D. **Rejection of Group II as rendered obvious by Huegel**

1) **Specific limitations of Group II not described in the cited art**

Group II requires receiving at a server a request for a venue from at least one client node remote from and unaffiliated with the server. Group II also recites receiving a specific indication of a client preference (e.g., specific seats).

2) **Explanation why such limitations render Group II unobvious over the cited art**

As discussed previously in regards to Group I, Huegel neither teaches nor suggests a client node unaffiliated with a server. Thus, a *prima facie* case of obviousness cannot be established, and the rejection must be overturned.

As Appellants pointed out in the Response submitted on December 28, 2001, Huegel requires the user to select a general area in which he or she desires to sit. See Huegel column 8, lines 41-44, column 9, lines 7-10, 25-27. The location processor then uses a selection algorithm to select individual seats in the selected area on a

user's behalf. The user is then able to choose whether or not to accept the seats chosen by the location processor. Appellants submit that such an "option" is merely an acceptance of the seat selected by the location processor rather than an indication of the user preference. Thus, the user is not provided with the option of indicating a specific preference (e.g., choosing a specific seat), as recited in the claim of Group II.

In maintaining the rejection, the Examiner asserts that it is known to select between an aisle seat in first class and an aisle seat in coach on a commercial airline. However, Appellants note that the Examiner's contention is merely the notion of choosing between two "sections" (e.g., a section of aisle seats in first class and a section of aisle seats in coach). Such a system would not enable a user to choose between seats in the same "section" that may be more desirable. For example, seats 10C and 10D on a 737 commercial airliner may both be aisle seats, but 10C may be more desirable for a right-handed customer. Alternatively, a user may prefer a coach seat that is in the emergency aisle or in the rear of the airplane. No reference cited by the Examiner teaches or suggests this granularity of seat selection, which is advantageously provided by the claim of Group II.

In summary, the Examiner has failed to make a prima facie case of obviousness, and the rejection should be overturned.

E. Rejection of Group III as rendered obvious by Huegel and Merrill

1) Specific limitation of Group III not described in the cited art

Group III requires retrieving from a database an image showing a view from a seat indicated by the client preference and transmitting the image to the client.

2) **Explanation why such limitation renders Group III unobvious over the cited art**

The Examiner has failed to provide any reference which teaches or suggests this limitation. Huegel does not disclose showing a view from a seat. In contrast, Huegel discloses displaying a two-dimensional illustration of a venue's floor plan. As previously discussed, Merrill generates a view from a seat of preference locally on the client system – transmission of images is not disclosed. Accordingly, a *prima facie* case of obviousness cannot be established, and the rejection must be overturned.

F. **Rejection of Group IV and Group VIII as rendered obvious by Huegel, Merrill and Bricklin**

1) **Specific limitation of Group IV and Group VIII not described in the cited art**

Group IV and Group VIII require a graphical representation showing available seats in a first representation and previously sold seats in a second representation.

2) **Explanation why such limitation renders Group IV and Group VIII unobvious over the cited art**

Both groups rely on the same basis for independent patentability, but depend from different base claims. Therefore, each group stands or falls individually. Throughout the following argument, it is assumed that dependent claims carry with them the arguments made in favor of base claims and any intervening claim. Huegel displays a floor plan highlighting the best available seats as chosen for the end user by the location processor, rather than indicating previously sold seats. Merrill only shows views from available seats as selected by the end user. Bricklin

fails to cure the deficiencies in Huegel and Merrill. Therefore, the prior art in combination fails to teach or suggest a graphical representation showing available seats in a first representation and previously sold seats in a second representation. Thus, a *prima facie* case of obviousness has not been established.

G. Rejection of Group V as rendered obvious by Huegel

1) Specific limitation of Group V not described in the cited art

Group V requires the indication of specific availability to be transmitted as one of a hypertext markup language page and a Java™ applet.

2) Explanation why such limitation renders Group V unobvious over the cited art

Nowhere in Huegel is hypertext markup language or Java™ applets disclosed. Thus, a *prima facie* case of obviousness has not been established.

H. Rejection of Group VI as rendered obvious by Huegel

1) Specific limitation of Group VI not described in the cited art

Group VI requires accepting payment information at the server.

2) Explanation why such limitation renders Group VI unobvious over the cited art

As can be seen from Figure 1, Huegel discloses that payment information is directed to a credit card payment authority that is separate from the server. Hence, Huegel does not disclose accepting payment information at the server. Therefore, Examiner has failed to establish a *prima facie* case of obviousness.

I. Rejection of Group VII as rendered obvious by Huegel

1) **Specific limitations of Group VII not described in the cited art**

Group VII requires requesting information about a venue across a wide-area network from a client node to be supplied by an unaffiliated server node. Group VII also recites selecting from a plurality of specific availability options (e.g., available seats) a specific client preference (e.g., specific seats).

2) **Explanation why such limitations render Group VII unobvious over the cited art**

Throughout the following argument, it is assumed that dependent claims carry with them the arguments made in favor of base claims and any intervening claim. As previously discussed in connection with Groups I and II, Huegel does not teach or suggest a client node unaffiliated with a server. It follows, then, that the server would not be unaffiliated from the client. Thus, a *prima facie* case of obviousness cannot be established in regards to this limitation.

As argued above in regards to Group II, Huegel requires the user to select a general area in which he or she desires to sit. See Huegel column 8, lines 41-44, column 9, lines 7-10, 25-27. The location processor then uses a selection algorithm to select individual seats in the selected area on a user's behalf. The user is then able to choose whether or not to accept the seats chosen by the location processor. Appellants submit that such an "option" is merely an acceptance of the seat selected by the location processor rather than an indication of the user preference from a plurality of specific availability options. Thus, the user is not provided with the option of selecting a specific preference from a plurality of specific availability

options (e.g., choosing a specific seat from the available seats), as recited in the claims of Group VII.

In maintaining the rejection, the Examiner asserts that it is known to select between an aisle seat in first class and an aisle seat in coach on a commercial airline. However, Appellants note that the Examiner's contention is merely the notion of choosing between two "sections" (e.g., a section of aisle seats in first class and a section of aisle seats in coach). Such a system would not enable a user to choose between a plurality of specific availability options (e.g., specific available seats) in the same "section" that may be more desirable. For example, seats 10C and 10D on a 737 commercial airliner may both be aisle seats, but 10C may be more desirable for a right-handed customer. Alternatively, a user may prefer a coach seat that is in the emergency aisle or in the rear of the airplane. No reference cited by the Examiner teaches or suggests this granularity of seat selection, wherein a user may select a specific client preference from one of a plurality of specific availability options, which is advantageously provided by the claims of Group VII.

In summary, the Examiner has failed to make a prima facie case of obviousness, and the rejection should be overturned.

IX. CONCLUSION AND RELIEF

Based on the foregoing, Appellants request that the Board overturn the Examiner's rejection of all pending claims and hold that all of the claims of the present application are allowable.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: November 12, 2002

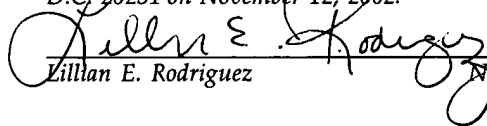


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Lillian E. Rodriguez
November 12, 2002 11-12-02

X. Appendix A

The claims involved in this Appeal are as follows:

- 1 1. (Twice Amended) A method comprising:
 - 2 (a) communicating on demand, from an information server through a
3 wide area network to a device connected to the wide area network information from
4 a database populated by a multiplicity of entries denoting availability for a venue;
5 (b) displaying the information such that an end user connected to the wide
6 area network can view the information on a client node unaffiliated with the server
7 as an aid in determining a best then available space conforming to a need of the end
8 user;
9 (c) providing over the wide area network to the end user the capability of
10 interactively selecting one of a time, a space, and a seat of choice;
11 (d) accepting over the wide area network from the end user a payment for
12 one of the time, the space, and the seat selection of choice;
13 (e) returning over the wide area network to the end user verification of
14 the successful completion of the payment.
- 1 2. (Amended) The method described in claim 1 wherein the space, the
2 time, and seat sought is for a theater or theater type setting.
- 1 3. (Amended) The method described in claim 1 wherein the space, the
2 time, and the seat sought is for a stadium type setting.
- 1 4. The method described in claim 1 wherein the space or time or seat or
2 seating sought is for an airplane or airliner.
- 1 5. The method described in claim 1 wherein the space or time or
2 reservation sought is accommodations on a cruise ship.

1 6. (Amended) The method described in claim 1 wherein a
2 communication connection between the information server and the end user
3 includes one of a wire, a cable, and a telephone line connection.

7. (Cancelled)

8. (Cancelled)

9. (Cancelled)

10. (Cancelled)

1 11. (Amended) The method described in claim 1 wherein a
2 communication connection between the information server and the end user
3 includes a satellite link.

12. (Cancelled)

13. (Cancelled)

14. (Cancelled)

15. (Cancelled)

1 16. (Amended) The method described in claim 1 wherein a
2 communication connection between the information server and the end user
3 includes a wireless link.

1 17. (Amended) The method described in claim 2 wherein a
2 communication connection between the information server and the end user is
3 wireless.

18. (Cancelled)

19. (Cancelled)

20. (Cancelled)

21. (Cancelled)

22. (Cancelled)

23. (Cancelled)

1 24. A method comprising:
2 receiving at a server a request for a venue from at least one client node
3 remote from and unaffiliated with the server;
4 transmitting from the server an indication of specific availability responsive
5 to the request, the indication of specific availability directed to the client node;
6 receiving a specific indication of a client preference at the server;
7 removing the client preference from any future indication of specific
8 availability.

1 25. The method of claim 24, wherein the specific availability includes
2 seating, further comprising:
3 retrieving from a database an image showing a view from a seat indicated by
4 the client preference;
5 transmitting the image to the client.

1 26. The method of claim 24, wherein the indication of specific availability
2 includes a graphical representation of at least a portion of a seating chart for the

3 venue, and wherein the graphical representation shows availability seats in a first
4 representation and previously sold seats in a second representation.

1 27. The method of claim 24, wherein the indication of the specific
2 availability is transmitted as one of a hypertext markup language page and a java
3 applet.

1 28. The method of claim 26 further comprising:
2 linking the representation of a seat to an image of a view from that seat.

1 29. The method of claim 24 further comprising:
2 accepting payment information at the server sufficient to permit access to the
3 specific client preference;
4 conducting an electronic payment transaction; and
5 providing an electronic receipt.

1 30. A method comprising:
2 requesting information about a venue across a wide area network (WAN)
3 from a client node to be supplied by an unaffiliated server node;
4 receiving an indication of specific availability at the client node;
5 selecting from a plurality of specific availability options a specific client
6 preference; and
7 receiving an indication that the specific client preference has been reserved
8 through the server node.

1 31. The method of claim 30 wherein the indication of specific availability
2 includes a graphical representation of at least a portion of a seating chart for the
3 venue, and wherein the graphical representation shows available seats in a first
4 representation and previously sold seats in a second representation.

1 32. The method of claim 31 wherein selecting comprises:
2 clicking on a desired seat.

1 33. The method of claim 32 further comprising:
2 receiving an image of a view from the desired seat responsive to the clicking.

1 34. The method of claim 30 further comprising:
2 supplying payment information for the specific client preference; and
3 receiving an electronic receipt sufficient to permit access to the specific client
4 preference.